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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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| BHUNGALIA FAMILY, LLC,<br><br>Plaintiff,<br><br>- against -<br><br>DEEPAK AGARWAL,<br><br>Defendant. | **COMPLAINT**<br><br>Civ No. 17-cv-03568 |

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Plaintiff, Bhungalia Family, LLC ("BFL"), by its attorneys, Halperin Battaglia Benzija, LLP, for its complaint, alleges as follows:

## NATURE OF ACTION

1. This is an action by BFL against Deepak Agarwal ("Agarwal") based on his continuing and unconditional guaranty of the payment obligations of Choxi.com, Inc. ("Choxi") to BFL pursuant to a promissory note in the principal amount of $1,000,000.

2. Agarwal has failed and refused to pay his obligations to BFL.

**THE PARTIES**

3. BFL is a Virginia limited liability company with its principal place of business at 1690 Hunting Crest Lane, Vienna, Virginia 22182. Its sole members are the Alpa Bhungalia Revocable Trust and the Haresh Bhungalia Revocable Trust.

4. Haresh Bhungalia and Alpa Bhungalia, individuals both residing at 1690 Hunting Crest Lane, Vienna, Virginia 22182, are the trustees of the Alpa Bhungalia Revocable Trust.

5. Haresh Bhungalia and Alpa Bhungalia, individuals both residing at 1690 Hunting Crest Lane, Vienna, Virginia 22182, are the trustees of the Haresh Bhungalia Revocable Trust.

6. Haresh Bhungalia, Alpa Bhungalia, Arjun Bhungalia, Meera Bhungalia, and Divya Bhungalia, all individuals residing at 1690 Hunting Crest Lane, Vienna, Virginia 22182, are the beneficiaries of the Alpa Bhungalia Revocable Trust.

7. Haresh Bhungalia, Alpa Bhungalia, Arjun Bhungalia, Meera Bhungalia, and Divya Bhungalia, all individuals residing at 1690 Hunting Crest Lane, Vienna, Virginia 22182, are the beneficiaries of the Haresh Bhungalia Revocable Trust.

8. Upon information and belief, Agarwal resides and is domiciled at 100 Barclay Street, Apartment 29A, New York, New York 10007.

**JURISDICTION**

9. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a) because BFL and Agarwal are citizens of different states, and the matter in controversy exceeds $75,000, exclusive of interest and costs.

10. The parties have also consented to the jurisdiction of this Court by agreement.

## VENUE

11. Venue is proper in this Court under 28 U.S.C. § 1391 because defendant resides in this district. The parties have also consented to the venue of this Court by agreement.

## FACTS

12. On or about September 25, 2015, Choxi executed a promissory note in favor of BFL in exchange for a loan from BFL to Choxi in the amount of $1,000,000 (the "Promissory Note").

13. The Promissory Note provides, among other things:

a. Choxi promises to pay BFL the principal amount of $1,000,000 (the "Principal Amount") plus interest from and including the date of the Promissory Note from time to time outstanding, at a rate per annum equal to 12% compounded annually over a year of 360 days;

b. the entire outstanding Principal Amount, together with all accrued and unpaid interest thereon, will be due and payable on September 25, 2016 (the "Maturity Date") with accrued interest paid monthly, beginning in September 2015;

c. an event of default means any one or more of the following, including, but not limited to: (i) Choxi fails to make any payment of accrued interest of the Principal Amount when due; and (ii) a bankruptcy filing by Choxi (each an "Event of Default");

d. upon an Event of Default, BFL shall have the right, without presentment, notice or demand of any kind, to accelerate the Promissory Note and to declare all of the obligations of Choxi under the Promissory Note immediately due and payable;

e. no delay or omission on the part of BFL in exercising any right or remedy under the Promissory Note shall operate as a waiver of such right or remedy or of any other right or remedy under the Promissory Note;

f. if the Promissory Note or any Principal Amount or interest thereon is not paid when due, Choxi promises to pay, in addition to the amounts due under the Promissory Note, the reasonable costs and expenses of such collection, including reasonable attorney's fees and expenses; and

g. if the Promissory Note or any Principal Amount of interest thereon is not paid when due, interest shall be due on the Principal Amount, from the Maturity Date, at the rate of twenty percent (20%) per annum, calculated on the basis of the actual number of days elapsed over a year of 360 days ("Default Interest").

14. As an inducement for BFL to loan Choxi the $1,000,000 pursuant to the Promissory Note, and as additional security for the repayment of the amounts due under the Promissory Note, on or about September 25, 2015, Agarwal also executed a written Continuing Unconditional Guaranty of Choxi's repayment obligations under the Promissory Note in favor of BFL (the "Guaranty").

15. The Guaranty provides, among other things:

a. Agarwal has a direct and indirect economic interest in Choxi and the monies lent to Choxi by BFL were given in consideration of and induced by the Guaranty;

b. Agarwal absolutely and unconditionally guarantees, as a primary obligor and not as a surety, the full and punctual payment and performance of the Guarantee Obligations;

c. the term "Guaranteed Obligations" is used in the most comprehensive sense and includes all obligations, indebtedness, debts and liabilities (including principal, interest, late charges, collection costs, attorneys' fees and the like) of Choxi to BFL;

d. the Guaranty is a guaranty of payment and not of collection;

e. Agarwal waives any right to require BFL to sue Choxi, any other guarantor, or any other person obligation for all or any part of the Guaranteed Obligations . . . ;

f. the Guaranty shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by, among other things, (i) any extension, renewal, settlement, compromise, waiver or release in respect of any of the Guaranteed Obligations, (ii) any change in the existence, structure or ownership of Choxi, or any insolvency, bankruptcy, reorganization or similar proceeding affecting Choxi; (iii) the existence of any claim, setoff or other rights which Choxi may have at any time against BFL; or (iv) any other act or omission to act or delay of any kind by Choxi, any other guarantor, BFL, or any other person;

g. Agarwal agrees to pay all costs and expenses including, without limitation, all court costs and attorneys' fees and expenses paid or incurred by the BFL, in endeavoring to collect all or any part of the Guaranteed Obligations from, or in prosecuting any action against Choxi, or Agarwal; and

h. the Guaranty shall be governed by an construed in accordance with the laws of the State of New York. Agarwal submits to the nonexclusive jurisdiction of the

United States District Courts and any New York State court sitting in New York, New York.

16. BFL duly performed all of its obligations under the Promissory Note, including without limitation, transferring $1,000,000 to Choxi.

17. During the period of October 7, 2015 through February 25, 2016, Choxi made eighteen (18) payments to BFL totaling $450,000, which after application of applicable interest, reduced the principal loan balance due on the Promissory Note to $589,990.44.

18. Choxi defaulted in its payment obligations under the Promissory Note by failing to pay when due, the monthly payment of accrued interest due on or before March 31, 2016 (the "Default Date").

19. Choxi has not made any payments pursuant to the Promissory Note since the Default Date. An involuntary Chapter 7 bankruptcy petition was filed against Choxi on November 10, 2016 and it remains in bankruptcy as of the filing of this action.

20. On or about September 1, 2016, BFL executed an Extension of Time Period for Unconditional Guaranties (the "Extension Agreement") pursuant to which, among other things, BFL agreed that:

a. notwithstanding the maturity and/or acceleration of the Guaranteed Obligations, or any default under any note with respect to the Guaranteed Obligations, it would forebear from seeking to collect under the Guaranty through and including March 25, 2017; and

b. nothing contained in the Extension Agreement shall be deemed to alter the Guaranty or the Guarantee Obligations except as expressly set forth in the Extension Agreement and such Guaranty shall remain in full force and effect.

21. Although no such demand or notice was required under the Promissory Note or Guaranty, by letter dated March 27, 2017, BFL demanded that Agarwal pay all amounts due and owing under the Guaranty (the "Demand Letter").

22. The amount due to BFL under the Promissory and thus, the Guaranty, as of May 11, 2017 is $711,917.87 (the "Amount Due").

23. Agarwal did not respond to the Demand Letter and has not paid the Amount Due or any of the Principal Amount or accrued interest due pursuant to the Guaranty.

**FIRST CAUSE OF ACTION**
**(Breach of Guaranty)**

24. Plaintiff repeats, reiterates and re-alleges the allegations set forth in paragraphs 1 through 23 above.

25. Agarwal breached the Guaranty by his failure to pay the Amount Due as detailed above, despite demand.

26. As a result for the foregoing, BFL is entitled to a money judgment against Agarwal for the Amount Due, together with interest that it has incurred and continues to incur, and attorney's fees, costs and disbursements to enforce the Guaranty.

WHEREFORE, plaintiff BFL demands a money judgment against defendant Agarwal in an amount to be determined at trial, inquest or motion, but not less than $711,917.87, together with interest, reasonable attorney's fees, costs and disbursements, and such other relied as the Court deems just and proper.

Dated: New York, New York
May 12, 2017

HALPERIN BATTAGLIA BENZIJA, LLP
*Attorneys for Plaintiff Bhungalia Family, LLC*

By: ____*/s/ Scott A. Ziluck*__________

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